



Office of the Attorney General

State of Texas

October 29, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Terrence S. Welch
Vial, Hamilton, Koch & Knox
1717 Main Street, Suite 4400
Dallas, Texas 75201

OR92-628

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17407.

The Town of Flower Mound (the "town"), which you represent, has received a request for information relating to the termination of the town fire chief. Specifically, the requestor seeks "[a]ny written or verbal complaints filed against Flower Mound Fire Chief Al Martin on or about Sept. 10 resulting in the indefinite suspension of Mr. Martin." You seek to withhold the requested information for reasons that amount to an assertion of the informer's privilege, an aspect of section 3(a)(1) of the Open Records Act. You also claim that some of the requested information is excepted from required public disclosure by common-law privacy interests, another aspect of the section 3(a)(1) exception.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that the requested information is excepted from required public disclosure by section 3(a)(1) in conjunction with the informer's privilege. *See* Open Records Decision No. 549 (1990) at 4-5 (incorporating the informer's privilege into section 3(a)(1)). The informer's privilege applies when a person reports violations of the law to officials having a duty to enforce the law. Open Records Decision No. 515 (1988) at 2. The informer's privilege serves to encourage the flow of information to the government by protecting the identity of the informer. *Id.* If the contents of the informer's statement would tend to reveal the identity of the informer, the privilege protects the statement itself to the extent necessary to preserve the informer's anonymity. *Id.* The purpose of the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement

efforts. *Id.* The informer's privilege under section 3(a)(1) is applicable not only to law enforcement agencies, but also to "administrative officials having a duty of inspection or of law enforcement within their particular spheres". Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961) and cases cited therein); *see also* Attorney General Opinion MW-575 (1982) at 2. The informer's privilege, however, may not be invoked to protect written statements complaining of a public employee's work performance when those statements do not reveal a crime or the violation of specific laws. Open Records Decision No. 515; *see also* Open Records Decision No. 218 (1978).

We have examined the complaints submitted to us for review. The complaints relate to a public employee's job performance and allege generally unprofessional and possibly negligent conduct allegedly exhibited by the fire chief. As a result of these statements, the fire chief was terminated. None of the statements submitted to us for review, however, reveal any crime or violation of specific laws, nor do you indicate that any laws were violated here. We conclude therefore that the informer's privilege may not be properly invoked to protect these statements from required public disclosure.

You claim that some of the requested information is protected by common-law privacy. In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court ruled that the doctrine of common-law privacy excepts only "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided that "the information is not of legitimate concern to the public." Generally, actions associated with a person's public employment do not constitute his private affairs. *See* Open Records Decision No. 470 (1987). On numerous occasions, this office has held that the reasons for an employee's resignation or termination are not ordinarily excepted from required public disclosure by the doctrine of common-law privacy. *See, e.g.*, Open Records Decision Nos. 444 (1986) (reason's for employee's termination not excepted under doctrine of common-law privacy) (section 3(a)(2)); 329 (1982); 269 (1981) (documents relating to an employee's resignation may not be withheld under doctrine of common-law privacy) (section 3(a)(2)).

The information for which you seek the protection of common-law privacy includes both information relating to the fire chief's job performance and information relating to his off-duty conduct. You advise us that this information in

some way formed the basis upon which the town decided to terminate the fire chief. Having examined this information, we conclude that it is neither intimate nor embarrassing. Moreover, it is clearly of legitimate public concern as it relates to the conduct of an important public official. Accordingly, we conclude that the requested information may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act and must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-628.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", is written over a horizontal line.

William Walker
Assistant Attorney General
Opinion Committee

WW/GCK/lmm

Ref.: ID# 17407

cc: Ms. Deanne Flecker
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